

Message Text

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E.O.11652: GDS

TAGS: EGEN, PFOR

SUBJECT; CSCE: COMMERCIAL SUBCOMMITTEE DISCUSSION ON
ARBITRATION

REF: NATO DOCUMENT CM(72)68(REVISED)NOTE 14
FOR US CSCE DEL

1. YOU MAY WISH TO DRAW ON FOLLOWING IN CSCE DISCUSSION
OF ARBITRATION TO SUPPLEMENT REFD. US FAVORS
ENCOURAGEMENT OF THIRD PARTY ARBITRATION AS A MEANS OF
SETTLING EAST-WEST COMMERCIAL DISPUTES. WHILE
RECOGNIZING THAT PARTIES TO CONTRACTS ARE FREE TO AGREE ON
ANY FORM OF SETTLEMENT, AND ACKNOWLEDGING THAT IN-COUNTRY
ARBITRATION BY TRIBUNALS OF EASTERN EUROPEAN CHAMBERS OF
COMMERCE HAS GENERALLY BEEN FAIR AND IMPARTIAL, THE US
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FEELS THAT PUBLIC ACCEPTANCE OF THIRD COUNTRY PRINCIPLE

BY EASTERN EUROPEAN GOVERNMENTS IS IMPORTANT TO ENCOURAGE AND REASSURE BUSINESSMEN THAT NORMAL COMMERCIAL CLIMATE EXISTS WITH MINIMAL RISK TO FIRMS DOING BUSINESS IN THE EAST.

2. THE US PREFERS ARBITRATION UNDER NEUTRAL AUSPICES, SUCH AS THE INTERNATIONAL CHAMBER OF COMMERCE, THE LONDON COURT OF ARBITRATION, OR SIMILAR BODIES IN STOCKHOLM, ZURICH, ETC. WE COULD ALSO ACCEPT ENCOURAGEMENT OF ARBITRATION UNDER THE RULES OF THE ECONOMIC COMMISSION FOR EUROPE, IN WHICH CASE THE PARTIES SHOULD DESIGNATE AN APPOINTING

AUTHORITY IN A THIRD COUNTRY AND SPECIFY A THIRD COUNTRY IN WHICH THE ARBITRATION IS TO TAKE PLACE.

3. WE ARE AWARE THAT THE ATTITUDE TOWARD SUCH PROCEDURE MAY VARY AMONG EASTERN COUNTRIES. IN THE OCTOBER 1972 TRADE AGREEMENT, THE USSR AGREED TO RECOMMEND THE LATTER (I.E. THE ECE). IN THE NOVEMBER 1972 EXCHANGE OF LETTERS, POLAND AGREED TO MENTION THE ICC AS A FURTHER ALTERNATIVE.

4. AS FAR AS WE KNOW, THE ECE ARBITRATION MACHINERY HAS NOT BEEN USED TO ANY APPRECIABLE EXTENT IN EAST-WEST TRADE. WESTERN BUSINESSMEN GENERALLY PREFER THAT INTERNATIONAL COMMERCIAL ARBITRATION BE CARRIED OUT UNDER THE AUSPICES OF, AND MACHINERY PROVIDED BY, PRIVATE ORGANIZATIONS WITH EXPERIENCE IN ARBITRATION AND AN ESTABLISHED REPUTATION FOR IMPARTIALITY. KISSINGER

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